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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/750,404

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Cindy L. Price

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EXAMINER

REICHLE, KARIN M

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 10/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/750,404	<b>Applicant(s)</b> PRICE ET AL.	
	<b>Examiner</b> Karin M. Reichle	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 42 is/are pending in the application.
- 4a) Of the above claim(s) 7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 9 and 42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/04 and 4/05</u>  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election without traverse of the species of Figures 1-3 with facing layers extensible in the longitudinal direction in the reply filed on 7-24-06 is acknowledged.

2. Claim 7 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7-24-06.

Claim 7 is withdrawn because it does not read on the elected species but rather on the species of Figures 4A-B.

### *Specification*

#### *Drawings*

3. The drawings are objected to because the line from 62 in Figure 1 and the outline of the element 62 should be shown in dashed lines to denote underlying structure. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for

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consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### *Description*

4. The disclosure is objected to because of the following informalities: On page 13, line 14, after "88 and 90", --and 92 and 94, respectively,-- should be inserted.

Appropriate correction is required.

#### *Claim Objections*

5. Claims 1-6, 8-9 and 42 are objected to because of the following informalities: All occurrences of "facing" should be --faceable--. Appropriate correction is required.

#### *Claim Language Interpretation*

6. The claim terminology is interpreted in light of the definitions on page 5, lines 15-30, page 6, lines 1-2, 10-11 and 23-28 and page 7, lines 6-9. Any other terminology not specifically defined will be given its usual, i.e. dictionary, definition.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-6, 8-9 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Osborn III et al '269.

Claims 1-6, 8-9 and 42: See Claim Language Interpretation section supra, and '269 at the Figures, especially Figures 3, 5, 7, 17A, 20, 23B, col. 1, lines 27-32, col. 5, lines 1-9 and 31-34, col. 5, line 58-col. 6, line 15, col. 6, line 28-col. 7, line 37, especially col. 6, lines 57-61, col. 8, lines 55-58, col. 25, lines 19-24 and 34-40, i.e. '269 teaches a "customizable", see again the Claim Language Interpretation section supra, i.e. user alterable, and col. 1, lines 27-32 and col. 6, lines 57-61, absorbent article comprising an extensible body facing layer 38 having a first end and a second end spaced along a longitudinal axis L which is extensible along the longitudinal axis, an extensible garment facing layer, e.g. 38, see discussion of claims 8-9 infra, or 40, having a first end and a second end spaced along the longitudinal axis L which is extensible along the longitudinal axis, and a non-extensible absorbent core 42 disposed therebetween which absorbent core is affixed, i.e. directly or indirectly, see, e.g., col. 16, lines 29-42 and thereby PCT '726, or col. 25, lines 34-40, to at least one of the facing layers at at least one location between said first and second ends.

Claim 2: The body facing layer has at least one aperture therein, see, e.g., col. 12, lines 1-2 and 48-49 and col. 15, lines 47-52 and Figures 17A and 20, exposing a surge layer, 46, see

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Figure 6 and col. 29, line 51-col. 32, line 38, disposed between the facing layers to a body of a user.

Claims 3-5: The garment facing layer further comprises a releasable attachment component, see 44 in Figure 3 and col. 27, line 12-col. 29, line 11 and col. 29, lines 14-30, i.e. discrete areas of mechanical fastener disposed at said first and second ends of the garment-facing layer or in a pattern on the garment-facing layer.

Claim 6: The absorbent core is anchored, i.e. directly or indirectly, to at least the garment facing layer by bonds 72 as seen in Figure 7 which can be formed by heat and pressure bonds, i.e. embossing, see again col. 16, lines 33-42 and thereby, by incorporation, PCT '726 at page 24, last full paragraph. It is noted that this claim recites a product by process, i.e. "by embossing". See MPEP 2113, i.e. "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." The end product of '269 is the same as the claimed product by process.

Claims 8-9: The body facing layer and garment facing layer are comprised of a single piece of extensible material 38 encasing the absorbent core or are individual sheets of extensible material 38, 40 attached to one another along outer peripheries thereof, see Figures 1-3 and col. 26, line 42-col. 27, line 11.

Claim 42: 269' either teaches the method as claimed in claim 42, see discussion of claims supra, especially col. 1, lines 27-32 and col. 6, lines 57-61, again, or since the prior art

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'269 device is the same as a device described in the specification for carrying out the claimed method, there is sufficient factual evidence for one to conclude that such device will inherently perform the claimed process, see MPEP 2112.02 (i.e. under the principles of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device).

9. Claims 1, 3-6, 9 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Jackson '570.

Claims 1, 3-6, 9 and 42: See Claim Language Interpretation section supra, and '570 at the Figures and abstract, col. 1, lines 47-56, col. 2, lines 9-12, col. 3, lines 11-14, 28-36, especially lines 34-35, col. 3, lines 57-59 and 66 et seq, col. 4, lines 7-15 and 42-47, col. 5, lines 3-7 and 65 et seq, i.e. '570 teaches a "customizable", see again the Claim Language Interpretation section supra, i.e. user alterable, and, e.g., the abstract, absorbent article comprising an extensible body facing layer, pleated layer 22, having a first end and a second end spaced along a longitudinal axis L which is extensible due to the pleating along the longitudinal axis, an extensible garment facing layer, pleated layer 24, having a first end and a second end spaced along the longitudinal axis L which is also extensible along the longitudinal axis due to the pleating, and a non-extensible absorbent core, unpleated layer 16, disposed therebetween which absorbent core is affixed, e.g. at least indirectly, see, e.g., col. 3, lines 66 et seq, col. 4 lines 42-47 and Figure 2 and col. 3, lines 33-36, to at least one of the facing layers at at least one location between said first and second ends, e.g. at least indirectly due to sealing along sides between ends. It is noted that the claims nor specification require the composition of the

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material of the extensible layers be extensible, note, e.g., page 8, lines 21-26 of the instant specification.

Claims 3-5: The garment facing layer further comprises a releasable attachment component, 26 and/or 26' in Figures, i.e. discrete areas of mechanical fastener disposed at said first and second ends of the garment-facing layer or in a pattern on the garment-facing layer.

Claim 6: See again discussion of claim 1 supra. The absorbent core is anchored, e.g. at least indirectly, to at least the garment facing layer by sealing of the layers 22 and 24 to each other by heat and pressure, i.e. embossing, see again cited portions of '570 supra. It is noted that this claim recites a product by process, i.e. "by embossing". See MPEP 2113, i.e. "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." The end product of '570 is the same as the claimed product by process.

Claim 9: The body facing layer and garment facing layer are comprised of individual sheets of extensible material attached to one another along outer peripheries thereof, see Figure 2.

Claim 42: '570 teaches the method as claimed in claim 42, see discussion of claims supra, e.g. the abstract, and col. 4, line 59-col. 5, line 7 and col. 1, lines 5-col. 2, line 12.




*Conclusion*

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The other prior art already of record as well as that newly cited teach at least some of the features of the claims.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
October 10, 2006